U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

65

identifying data deleted to prevent clearly unwarranted invasion of personal privacy
PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 29 2006
SRC 03 188 52744

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO withdrew the director's decision and remanded the matter to the director for a new decision. The director again denied the petition and, upon the AAO's instructions, certified the new decision to the AAO for review. The AAO will once again remand the matter to the director for further consideration and action.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was a doctoral student at the University of Texas at Austin, who stated that he seeks employment as a marketing consultant for power companies. As of his most recent submission, the petitioner is a research director at Providian Financial Corporation in San Francisco, California. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The director's first decision, issued July 20, 2004, was based largely on the assertion that, because many of the petitioner's witnesses had Ph.D.s but the petitioner himself did not, the petitioner was therefore underqualified and thus ineligible for the national interest waiver. The AAO rejected this reasoning and remanded the matter on February 25, 2005 for a decision that more thoroughly explored the merits of the petitioner's waiver claim. The AAO concluded its discussion with this paragraph:

> Therefore, this matter will be remanded for consideration of whether the petitioner's past record, not limited to work experience, justifies projections of future benefit to the national interest. We note that the evidence consists mostly of testimony from collaborators and close colleagues regarding the petitioner's multidisciplinary qualifications to work on important projects and manuscripts published after the date of filing. In evaluating this evidence, the director should consider that eligibility for the waiver rests with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. [*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998)] at 219, n. 6.

On March 11, 2005, the director issued a request for evidence, the substantive portion of which reads:

> PLEASE PROVIDE THE FOLLOWING:
>
> - Documentation of the self-petitioner's work with the Public Utility Commission of Texas during the time period of April 2001 through June 2003.

> Specifically, what were the self-petitioner's job duties? What percentage of time did he or she spend on these duties? If the self-petitioner worked in a group or team, how many other people worked with the self-petitioner? What were their jobs or duties?

The director's notice did not discuss the merits of the petitioner's work or put the petitioner on notice of any specific shortcomings or deficiencies in the record. The petitioner responded to this notice by submitting proof copies of scholarly articles relating to work that the petitioner had conducted previously.

On July 12, 2005, the director again denied the petition. This decision, as worded, is somewhat confusing and gave the petitioner little guidance as to how to compile a meaningful appeal. The director stated: "it is the Service's decision to reaffirm its original denial." The "original denial," however, had rested on grounds that the AAO had already overturned. To say that it had been "reaffirmed," therefore, falsely suggested that the grounds stated in the first denial still applied in the second denial.

The director then stated that the petitioner's response to the request for evidence did not address that request, because it consisted of new articles rather than documentation of the petitioner's work during 2001-2003. The petitioner has since stated that the articles describe work performed in 2002. In any event, this portion of the director's decision implies that the petition was denied because the petitioner had not provided enough documentation of his work for the Public Utility Commission of Texas, and that therefore the petitioner could secure approval of the petition simply by providing more thorough documentation. The critical issue, however, is the nature and impact of the petitioner's work there, not just how well the petitioner has documented that work.

The director then stated: "The record does not support the finding that [at] the time of filing this visa petition the self-petitioner's contributions to the field were of such unusual significance as to merit the special benefit of a national interest waiver, over and above the visa classification being sought." Review of the record may well bear out this conclusion, but as presented in the decision, it is only a conclusion, with no supporting premises to explain how or why the director arrived at that conclusion.

The decision concludes with this sentence fragment: "The evidence submitted persuasively demonstrates a waiver of the job offer for reasons in the national interest." This incomplete sentence, on its face, could be interpreted as an acknowledgement of eligibility for the waiver, which could have caused further confusion when the petitioner endeavored to assemble an appropriate response.

The director must review all the evidence of record, including the petitioner's most recent submissions. The director should examine these materials critically. For example, in one submission, the petitioner has highlighted this passage: "Texas continues to lead the United States in electricity restructuring." The petitioner does not call attention to the clause that immediately follows: " . . . but progress in this country has virtually ground to a halt."

If the director finds that more information or evidence is required, the director should request such evidence and explain why that evidence is relevant to the question of the petitioner's eligibility for the waiver. For instance, the petitioner's waiver claim is tied to his work for energy companies in Texas. The director may choose to request evidence to show that the petitioner's current work for a financial firm in California is related closely to the

petitioner's previous work in Texas, because if the petitioner's new work is not closely related, then any arguments about the importance of his work in Texas would be nullified by the fact that the petitioner has ceased such work and left Texas.

In general, the petitioner must demonstrate the significance and impact, at a national level, of his own work, rather than simply establishing the overall importance of his occupation. In this regard, independent evidence (such as heavy independent citation of his published work) would carry significantly more weight than letters from the petitioner's mentors and supervisors. If the director finds such evidence to be lacking, and articulated this deficiency, the petitioner would have a chance to submit a meaningful response. The petitioner has not, to date, had such an opportunity.

Therefore, this matter will again be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.